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PART II—Section 3

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No. 177] NEW DELHI, WEDNESDAY, DECEMBER 24, 1952

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 24th December 1952

S.R.O. 2120.—WHEREAS the election of Shri Hamirka Alarakha Hasan of Jamnagar, Saurashtra, as a member of the Legislative Assembly of the State of Saurashtra from the Jamnagar City (East) Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Thakar Gokaldas Hirjee of Dhanbai Dela, Jamnagar, Saurashtra;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 53 of 1952

CORAM

Shri N. L. Vyas, M.A., LL.B.—*Chairman.*

Shri V. V. Mehta, B.Sc., LL.B.

Shri H. C. Shah, B.A., LL.B. } *Members of the Election Tribunal.*

In the matter of the Representation of the People Act, 1951.

And

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951.

And

In the matter of the Election Petition presented thereunder by Shri Thakar Gokaldas Hirjee, Dhanbai Dela, Jamnagar.

Versus

- (1) Zaveri Valabhdas Valji, Bhatt Fali, House No. 554, Hut, Jamnagar.
- (2) Dhanki Chatrabhuj Ladhabhai, Zandu Bhatt Street, Jamnagar.
- (3) Dave Rasiklal Parshottam, Near Jalani Jal, Jamnagar.
- (4) Dava Harilal Maganlal, Nadipa, Near Amba Mata's Temple, Jamnagar.
- (5) Bhagyodaya Laxmidas Savji, Patori Fali, Jamnagar.
- (6) Vania Nuruddin Mahmedali, Voravad, House No. 3451, Jamnagar.
- (7) Sheth Shantilal Ilamatlal, New Road, Ward No. 3A, Jamnagar.
- (8) Hamirka Alarakha Hasan, Outside Khoja's gate, Jamnagar.
- (9) Gohel Neghji Nadhanji, Near Nagnath Gate, Jamnagar.
- (10) Ahya Jayantkumar, Outside Khambhalia Gate, Jamnagar.

Appearances:—

Shri V. G. Hathi, Advocate, with Shri N. D. Buch, Advocate, for the Petitioner
Shri Thakar Gokaldas Hirjee.

Respondent No. 1 Zaveri Valabhdas Valji present in person.

Shri C. N. Shah, Advocate with Shri K. L. Hathi, Advocate for Respondent
No. 8 Hamirkha Alarakha.

Ex-parte against respondents Nos 2, 3, 4, 5, 6, 7, 9 and 10.

This is a petition for declaring the election from Jamnagar City East Constituency to the Saurashtra Legislative Assembly as wholly void. The petition is made by a candidate whose nomination was rejected by the Returning Officer. The Returning Officer has rejected the nomination of the petitioner on the ground that he had appointed more than one election agent, and had thereby contravened the provisions of Sec. 33, 36, and 40 of the Representation of the People Act. The petitioner has urged in his petition that his nomination was illegally rejected by the Returning Officer, because he had not appointed two election agents in one nomination paper. He has also urged that by rejection of his nomination the result of the election has been materially affected. It appears that there were several candidates for election from this constituency, the petitioner being one of them. 26th November 1951 to 28th November 1951 were fixed for filing nomination papers. The petitioner had filed the first nomination paper on 26th November 1951 which is marked No. 8 in which he had declared Ranchhodji Meghji as his election agent. The second nomination paper marked 8A was filed on 28th November 1951, in which he had declared himself as his election agent. Along with the nomination paper marked 8 was filed the paper appointing Ranchhodji as his election agent. This was on a separate form 5A prescribed by the rule 11A. In this paper of appointment Ranchhodji had duly accepted his appointment. Similar paper of appointment was filed along with the nomination paper No. 8A. 30th November 1951 was fixed for the scrutiny of nomination papers. The Returning Officer, on scrutiny of all the nomination papers, found that this petitioner had appointed himself and Ranchhodji as his election agents by separate nomination papers. He held that by appointing two election agents the petitioner had contravened the provisions of Sec. 40, and therefore, on that ground, held all the nomination papers of the petitioner invalid. On this ground he rejected his nomination. As there were other candidates for this constituency, the election was held on the appointed date, and respondent No. 8, having obtained more votes than any other candidate, was declared elected. The total number of voters in this constituency were 38,000. Out of this number, 7271 had voted for respondent No. 8 and the nine candidates who had opposed respondent No. 8 had in all obtained only 4,867 votes. The petitioner has, therefore, made this petition for declaring the election void.

2. Only respondent No. 8 has contested this petition. The other nine respondents, except Zaveri Vallabhdas Valji, have neither appeared nor contested the petition. Only Zaveri Vallabhdas Valji appeared at the hearing, and he supported the petitioner. Respondent No. 8 contended that the petitioner had contravened the provisions of Sec. 33, 36 and 40 of the Representation of the People Act by appointing himself and Ranchhodji as his election agents, and therefore the Returning Officer had correctly rejected his nomination. It was also urged on his behalf that as he had secured more votes than the votes secured by all the candidates who had opposed him, and as the polling in the whole of Saurashtra was not above 35 per cent., even if the petitioner's nomination had not been rejected, and if he had contested the election, the result would have been the same. It was, therefore, urged that by the rejection of the nomination of the petitioner, the result of the election has not been materially affected. On these respective contentions, the following points for decision were settled:—(1) Can the petitioner be said to have appointed two election agents in contravention of the provisions of Sec. 40? (2) Was the nomination of the petitioner improperly rejected by the Returning Officer? and (3) Whether the result of the election has been materially affected by the rejection of the nomination of the petitioner? The Tribunal's finding on these points is that the Returning Officer had improperly rejected the nomination of the petitioner, and that the result of the election has been materially affected by the rejection of his nomination.

3. From the facts narrated above, it will be clear that the petitioner had not filed the two nomination papers simultaneously, but they were filed on two different days. It is also clear that in each nomination paper, there is a declaration appointing one election agent only. The first nomination paper that was filed in point of time was No. 8 in which Ranchhodji was appointed the election agent. It was in the second nomination paper No. 8A that the petitioner had appointed himself as the election agent. It is, therefore, clear that if each nomination paper is taken as a separate entity, there is only one election agent declared in each nomination paper.

But it was urged on behalf of respondent No. 8 that all the nomination papers have to be considered together, and if different agents are declared in different nomination papers, the appointment of all the election agents would be invalid, because the appointment of more than one agent would be in contravention of the provisions of Sec. 40 of the Act. It would, therefore, be necessary to consider the relevant provisions regarding the appointment of election agent in the Act and in the rules made thereunder.

4. Sub-sec. 3 of Sec. 33 prescribes that every nomination paper shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under the Act for the appointment, and who shall be named in the declaration. If the form given in schedule 2 of the nomination paper is referred to, it will be clear that this declaration has to be made in the prescribed form. Then Sec. 40 provides that every person nominated as a candidate at an election shall, before the delivery of the nomination paper under sub-sec. 1 of Sec. 33, appoint in writing either himself or some one other person to be his election agent. The form No. 5A under rule 11A is the one prescribed for the appointment of an election agent. This form prescribes the acceptance of the appointment by the election agent. It would, therefore, appear that the appointment of the election agent has to be made first in the prescribed form, which is 5A, and thereafter the declaration has to be made regarding the appointment of an election agent in the prescribed form. The form of the declaration is given in schedule 2, and it appears that the declaration is to be made at the foot of the nomination paper, because there is only one form both for the nomination and for the declaration of the agent prescribed in schedule 2. But there is no doubt that the appointment of the election agent is to precede the declaration to be made under sub-sec. 3 of Sec. 33. In the present case also, the petitioner had filed the paper relating to the appointment of the election agent separately along with the nomination paper No. 8 on 26th November 1951. Similar paper relating to the appointment of himself as election agent was filed with the nomination paper No. 8A.

5. Reference may also be made to the form of the nomination paper given in schedule 2, and to the explanatory foot-note given in that form about the appointment of election agent. That foot-note is as follows:—"only one election agent is to be appointed by a candidate. If more than one nomination paper is delivered by or on behalf of a candidate for election in the same constituency, the name of the election agent so appointed, whether such agent is the candidate himself or any other person, shall be specified in each such nomination paper". It would, therefore, clearly appear from the provisions of Sec. 40, and from this explanatory note in the form of the nomination paper in schedule 2, that a candidate can appoint only one person as his election agent. There cannot, therefore, be any doubt that a candidate has no right to appoint more than one person as his election agent.

6. On the provisions of Section 40, and particularly on the explanatory foot note in the form of the nomination paper in schedule 2 it was urged on behalf of respondent No. 8 that the petitioner had contravened the provisions of Section 40 by appointing two election agents in the two nomination papers. It was, therefore, urged on his behalf that the petitioner had contravened the provisions of sub-section 1 of Section 33, inasmuch as he had not filed the nomination paper completed in the prescribed form. Consequently, it was urged that the Returning Officer had the right under clause (d) of sub-section 2 of Section 36 to reject his nomination. It was urged that the form of the nomination paper given in schedule 2 prescribed that only one election agent has to be appointed in each nomination paper, and as the petitioner had declared different persons as his election agents in different nomination papers, all the nomination papers must be considered to be not in the prescribed form, and therefore liable to be rejected under Section 36 sub-section 2 clause (d).

7. On behalf of the petitioner, it was urged that all the nomination papers have to be treated as separate entities, and if even one nomination paper is found to be in order, the candidate must be considered to be validly nominated. In support of this view, reference was particularly made to the Razzar Mohemaden Rural Constituency, 1937, case reported in Sen and Poddar's Election Cases at page 716. In that case, different election agents were appointed by different nomination papers. Still, it was held that the nomination was not invalid because only one agent was appointed in each nomination paper. But we do not think, this decision can be considered as authority on the question we have to consider, because in the Government of India Act, 1935 and in the rules made thereunder, there was no provision about appointment of an election agent before filing the nomination paper. The provisions of rule 15 and 18 made under that Act were not quite similar to the provisions of Section 33 and Section 40 of the Representation of the People Act. Under the present Act only one Agent can be appointed by each

candidate, and that appointment has to be in a prescribed form which is to be separate from the nomination paper. Moreover, in that decision the effect of appointing several agents in different nomination papers, which are each found to be valid and in order, has not been considered. If the view propounded in that case were to be accepted, the result would be that on consideration of each nomination paper separately, and on holding each nomination paper individually in order, there would be several persons appointed as agents, the result which is clearly in contravention of the provisions of Section 40. The Act is very clear on the point viz., that there shall be only one election agent for each candidate. Therefore, if each nomination paper is treated as a separate entity, and if treating them as such, all are found in order, though different agents are appointed in different nomination papers, the result would be one directly in contravention of the provisions of Section 40 of the Act. We are, therefore, unable to agree with the view expressed in that decision viz., that each nomination paper is to be treated as a separate entity, and if there is only one election agent mentioned in each nomination paper, that nomination paper should be considered as valid. We are not, therefore, basing our decision on the view expressed in Razzar Mohemadan Constituency case.

8. Then, it is clear that to some extent all the nomination papers have to be scrutinised not entirely as separate entities, but in relation to each other to some extent. This is also clear from the provisions of Section 33 sub-section 2 and from the proviso to that sub-section. At the same time the provisions of sub-section 7 of Section 33 and of sub-section 3 of Section 36 cannot be disregarded altogether. According to these provisions, a candidate has a right to file more than one nomination paper, and if one out of several nomination papers is found to be valid, he has to be declared as duly nominated. It would, therefore, appear that to some extent each nomination paper has to be considered as separate entity. If, therefore, the two nomination papers filed by the petitioner are considered as separate entities, it is clear that each nomination paper is in the prescribed form, because only one election agent is declared in each nomination paper. But in our view what is really important to consider is not the declaration about the election agent in the nomination paper, but the appointment of the election agent as prescribed in form 5A. In our view, a candidate has the right to appoint one election agent only, and therefore as soon as that right is exercised by making an appointment in the prescribed form, he is under the obligation to declare in each nomination paper the name of that election agent only. This is clear because Section 40 only permits the appointment of one election agent. No candidate, therefore, can, after once appointing a particular individual as his election agent, declare someone else as his election agent in other nomination papers without revoking the first appointment. We are, therefore, of the opinion that after making the appointment of Ranchhodji as his election agent on 26th November 1951, the petitioner had no right to declare himself as the election agent in the second nomination paper filed on 28th November 1951. As he had declared himself as the election agent in the nomination paper No. 8A before revoking the appointment of Ranchhodji, to that extent, the second nomination paper was invalid, because it contained the declaration about an election agent, who was not validly appointed as election agent by the petitioner. To this extent, it was certainly permissible to the Returning Officer to consider both the nomination papers together. It cannot, therefore, be urged on behalf of the petitioner that, even though different persons were appointed in different nomination papers, as only one person was appointed as election agent in one nomination paper, each nomination paper should be considered valid.

9. Then, the question arises as to whether all the nomination papers would be rendered invalid by the appointment of different election agents in different nomination papers. On this question, it was urged on behalf of respondent No. 8 that by appointment of different election agents in different nomination papers, the provisions of sub-section 1 of Section 33 read with the explanatory foot note in the form of nomination paper in schedule 2 were contravened, and therefore all the nomination papers were rendered invalid. But there is nothing in sub-section 1 or sub-section 3 of Section 33 or in the explanatory foot note which can support this contention. It is true that the explanatory foot note in the form of the nomination paper in schedule 2 does prescribe that there shall be only one election agent appointed by each candidate. But that explanatory note can at the most be construed as laying down that each nomination paper shall contain a declaration about the appointment of the same election agent. It was also urged on behalf of respondent No. 8 that the Election Commission has, in the booklet issued by the Election Commission to explain certain provisions of the Act, construed the provisions of Section 40, 33 and of the explanatory note in the form of the nomination paper as laying down that the name of the same person should be mentioned as election agent in each of the nomination papers and if that is not done, all the nomination papers are liable to be rendered invalid. This appears to be the case; but as mentioned in the preface to that booklet what is stated therein has not to

be considered as authoritative interpretation of the different provisions of the Act or of the rules made thereunder. At the most these provisions can be construed as laying down that only one person can be appointed as election agent, and his name only shall be declared in each nomination paper.

10. Assuming therefore that the name of the same person as the election agent has to be declared in each nomination paper, that would not render all the nomination papers invalid on the ground that they are not in the prescribed form. At the most, it can be said that the second nomination paper No. 8A in which a different election agent was declared was invalid as it was not in the prescribed form in as much as it did not contain the declaration about the election agent who was duly appointed under Section 40 of the Act. But as regards the first nomination paper No. 8 it cannot be urged that the declaration regarding the election agent in that nomination paper was invalid, because undoubtedly that very person was duly appointed as election agent under Section 40. Therefore, even assuming that the name of the same person has to be mentioned in all the nomination papers as the election agent, that would not invalidate the first nomination paper.

11. We have come to this decision on the general principles of law regarding principals and agents. When a statute gives anyone the right to appoint for a particular purpose one person as his agent, and when that person exercises that right by appointing a particular individual as his agent, he has exhausted his right under that statute, and any further appointment of some other person as his agent would be in excess of his statutory right, and would, therefore, be inoperative and void. Consequently, the petitioner, by appointing Ranchhodji as his agent on 26th November 1951, had exhausted the right granted to him under Section 40 of the Act to appoint an election agent, and had no further right to appoint any other person as his election agent before revoking the appointment first made. In this view, the appointment made on 28th of himself as election agent was void, and was of no effect whatever. The result then would be that the second nomination paper No. 8A did not contain any declaration about the duly appointed agent. But that would not affect the validity of the declaration made about the duly appointed agent in the first nomination paper No. 8. This was exactly the view taken in Benaras and Mirzapur Districts Mohemadan Rural constituency, 1937 reported in Sen and Poddar's Election Cases at page 154. The relevant observations are at pages 158 and 159 of the report as follows.—

“There is no specific provision in election law to invalidate each of the two nominations so filed. We have, therefore, to fall back upon general principles of law which determine the validity of more than one act performed by a person in the exercise of a limited power with which he is invested by a particular provision of law. And election agent is a person occupying a particular status and burdened with peculiar liabilities. He is a creation of the law and the power to appoint him is contained in Paragraph I, Part II of the Corrupt Practices Order, which imposes a duty and confers a power to the appointment of only one election agent. This power is exhausted as soon as some one person is appointed. Upon general principles any subsequent appointment made by him must be deemed to be in excess of the power given by the law and consequently invalid. The question, therefore, arises whether any such subsequent or void appointment can have the effect of invalidating the original appointment validly made. We are clearly of opinion that the answer must be in the negative. The first appointment having been validly made the power was exhausted and it remained good and valid and unaffected by the subsequent and void appointment of Murtuza in serial No. 4.”

12. On behalf of respondent No. 8 reference was made to the decision in Manipuri and Etah Districts Mohemadan Rural Constituency, 1946 reported in the same volume at page 530. But in that case, the facts were entirely different. In that case, several nomination papers were filed simultaneously, and it was, therefore, held that it was not clear as to which agent was appointed first in point of time. It is clear, therefore, that the decision in that case is hardly of any help to respondent No. 8. In a recent decision by the Election Tribunal constituted to hear the petition about election to the Bombay Legislative Assembly from Borsad Constituency the same point came to be considered. There also two different election agents were appointed by two sets of nomination papers filed on different dates. Following the view taken in Benaras and Mirzapur Districts Mohemadan Constituency case, the Tribunal held that the nomination of the petitioner was improperly rejected. We feel, therefore, no doubt that the first nomination paper No. 8 was in the prescribed form.

13 If that is so under sub-section 3 of Section 36, the petitioner must be considered to have been validly nominated. It is true that two different persons were declared as agent in two nomination papers, but on that ground both nomination papers were not liable to be rejected, as sub-section 2 of Section 36 does not permit the rejection of the nomination paper on the ground of the contravention of the provisions of Section 40. Only the second nomination paper was liable to be rejected on the ground that it was not in the prescribed form.

14 The last question requiring decision is whether the result of the election was materially affected by the rejection of the nomination of the petitioner. I am now well-settled that when the nomination of any candidate is improperly rejected by the Returning Officer there is a strong presumption that by such rejection the result of the election has been materially affected. This view has been taken in a series of decisions which are reported in Sen and Poddar's Election Cases at pages 1 15 66 106, 122 313 649, 712 and 759. The learned Advocate for respondent No 8 also conceded that such a presumption does arise. But he urged that in this case this presumption was rebutted satisfactorily, because even if the petitioner's nomination had been held valid, and if he had contested the election the result would not have been different, because he would not have obtained a larger number of votes than respondent No 8. The learned Advocate based his argument on the assumption that only 35 per cent of the total number of voters would have exercised their franchise. We do not think, we would be justified in accepting this assumption as well founded because it is difficult to say how the voters would have reacted if this petitioner had been in the field as one of the candidates. Similarly it cannot be said as to how many voters who had voted for respondent No 8, would have, or would not have voted for the petitioner. It is clear that respondent No 8 had only secured 20 per cent of the total votes in this constituency. Only if respondent No 8 has been able to secure the votes of 51 per cent of the total number of voters in this constituency, it would have been possible to say with some certainty that the result of the election would not have been affected to any extent by the petitioner being one of the candidates at the election. Even then the petitioner could have urged that if he had been in the field majority of the voters who had voted for respondent No 8 would have voted for him. It is therefore, difficult to say with any certainty that the result would not have been otherwise if the petitioner had been in the field as one of the candidates. We are therefore of the opinion that by rejection of the nomination of the petitioner the result of the election was materially affected.

15 In the result we hold that the nomination of the petitioner was improperly rejected and such rejection has materially affected the result of the election. We therefore declare the election from Jamnagar City East Constituency to be wholly void. Respondent No 8 must pay also the costs of this petition to the petitioner. We assess the costs at Rs 75.

ORDER

The election from Jamnagar City East Constituency held in January 1952 is declared to be wholly void and respondent No 8 is directed to pay Rs 75 as costs to the petitioner. The other respondents shall bear their own costs.

Rajkot,

Dated the 13th December 1952

N. L. Vyas, Chairman

Election Tribunal

VASANTLAL V. MEHTA, Member,

Election Tribunal

HIRAJAL C. SHAH, Member,

Election Tribunal

[No 19/53/J2-Elec III]

SRO 2121—WHEREAS the election of Shri Tamboli Fule and Parshottam of Karmaj Kumbh Bendi Bunder, Jamnagar Saurashtra, as a member of the Legislative Assembly of the State of Saurashtra from the Jamnagar City (West) Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Trambaklal Manishankar Joshi of Bhatt's Ambli, Jamnagar, Saurashtra,

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the

said petition has, in pursuance of the provisions contained in section 103 of the said Act sent a copy of its Order on the said Election Petition to the Election Commission,

NOW THEREFORE in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal

Election Petition No 60 of 1952

Coram

Shri N L Vyas, MA LLB—*Chairman*

Shri V V Mehta, B Sc, LLB

Shri H C Shah BA, LLB

} *Members of the Election Tribunal.*

In the matter of the Representation of the People Act, 1951

and

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951

And -

In the matter of the Election Petition presented thereunder by Shri Joshi Trambaklal Manishanker, Bhat's Ambli, Jamnagar

Versus

- (1) Kankhara Prabhulal Bhujji, Behind Vasanjii Khumji Bunglow, Jamnagar
- (2) Kotecha Harjivan Vithaldas, New Digvijaysinhji Tin Factory, Nagnath Gate Road, Jamnagar
- (3) Zaveri Valabhadas Valji Bhatt Fali House No 554 Jamnagar
- (4) Tamboli Fulchand Parshottam Kusum Kunj, Bedi Bunder Jamnagar.
- (5) Dadala Ottamchand Motichand, Near Parsi Agari Jamnagar
- (6) Bhatia Vinobhai Jagnnath Mangal Baag Hospital Road Jamnagar
- (7) Lalcha Ahmed Issa Kassai Vad, House No 1400 Jamnagar
- (8) Varia Bhagwanji Ratansi, Lal Baag, Jamnagar

Appearances —

Shri V G Hathi, Advocate with Shri N B Buch, Advocate for the petitioner.

No 4 Tamboli Fulchand Parshottam

Ex parte against respondents Nos 1, 2, 5, 6 7 and 8

Respondent No 3, Javery Valabhadas Valji, present in person

This is a petition for setting aside the election of respondent No 4 Tamboli Fulchand Parshottam to the Saurashtra Legislative Assembly from Jamnagar City West Constituency. The petition is made by a candidate whose nomination was rejected by the Returning Officer. The Returning Officer has rejected the nomination of the petitioner on the ground that he had appointed more than one election agent and had thereby contravened the provisions of Sec 33, 36, and 40 of the Representation of the People Act. The petitioner has urged in his petition that his nomination was illegally rejected by the Returning Officer because he had not appointed two election agents in one nomination paper, and also because before scrutiny he had revoked the appointment of one election agent. He has also urged that by rejection of his nomination the result of the election has been materially effected. It appears that there were several candidates for election from this constituency the petitioner being one of them. 26th November 1951 to 28th November 1951 were fixed for filing the nomination paper. The petitioner had filed the first nomination paper on 26th November 1951 which is marked No 2 in which he had declared Jayashanker Hematram Ora as his election agent. The second nomination paper marked 2/2 was filed on 27th November 1951 in which he had declared himself as his election agent. The third nomination paper marked 2/3 was filed on 28th November 1951 in which also he had declared himself as his election agent. Along with the nomination paper marked 2 was filed the paper appointing Jayashanker as his election agent. This was on a separate form 5A prescribed by the rule 11A. In this paper of appointment Jayashanker had duly accepted his appointment. Similar papers

of appointment were filed along with the nomination papers 2/2 and 2/3 30th November 1951 was fixed for the scrutiny of nomination papers. An objection was raised at the scrutiny of nomination papers for another constituency, the petitioner, before actual scrutiny, gave an application Ex. 15 on 30th November 1951 whereby he revoked the appointment of Jayashanker as his election agent and appointed himself as the election agent. The returning Officer, on scrutiny of all the nomination papers, found that this petitioner had appointed himself and Jayashanker as his election agents by separate nomination papers, and held that the petitioner had no right to revoke the appointment once made. He also held that by appointing two election agents the petitioner had contravened the provisions of Section 40, and, therefore, on that ground, held all the nomination papers of the petitioner invalid. On this ground he rejected his nomination. As there were other candidates for this constituency, the election was held on the appointed date, and respondent No. 4, having obtained more votes than any other candidate, was declared elected. The total number of voters in this constituency were 36,361. Out of this number 9,277 had voted for respondent No. 4, and the seven candidates who had opposed respondent No. 4 had in all obtained only 3,174 votes. The petitioner has, therefore, made this petition for setting aside the election of respondent No. 4 from this constituency.

2. Only respondent No. 4 has contested this petition. The other seven respondents, except Zavery Valabhadas Valji have neither appeared nor contested the petition. Only Zavery Valabhadas Valji appeared at the hearing, and he supported the petitioned. Respondent No. 4 contended that the petitioner had contravened the provisions of Section 33, 36 and 40 of the Representation of the People Act by appointing himself and Jayashanker as his election agents, and therefore, the Returning Officer had correctly rejected his nomination. He also contended that the petitioner had no right to revoke the appointment of Jayashanker after the last date for filing the nomination papers. It was also urged on his behalf that as he had secured more votes than the votes secured by all the candidates who had opposed him, and as the polling in the whole of Saurashtra was not above 35 per cent, even if the petitioner's nomination had not been rejected, and if he had contested the election, the result would have been the same. It was, therefore, urged that by the rejection of the nomination of the petitioner, the result of the election has not been materially affected. On these respective contentions, the following points for decision were settled:— (1) Can the petitioner be said to have appointed two election agents in contravention of the provisions of Section 40? (2) whether the appointment of Jayashanker Hematram Oza was validly revoked and if so, what is its effect? (3) was the nomination of the petitioner improperly rejected by the Returning Officer, and (4) whether the result of the election has been materially affected by the rejection of the nomination of the petitioner? The Tribunal's finding on these points is that the Returning Officer had improperly rejected the nomination of the petitioner, and that the result of the election has been materially affected by the rejection of his nomination.

3. From the facts narrated above, it will be clear that the petitioner had not filed the three nomination papers simultaneously, but they were filed on three successive days. It is also clear that in each nomination paper, there is a declaration appointing one election agent only. The first nomination paper that was filed in point of time was No. 2 in which Jayashanker was appointed the election agent. It was in the second and the third nomination papers Nos. 2/2 and 2/3 that the petitioner had appointed himself as the election agent. It is, therefore, clear that if each nomination paper is taken as a separate entity, there is only one election agent declared in each nomination paper. But it was urged on behalf of respondent No. 4 that all the nomination papers have to be considered together, and if different agents are declared in different nomination papers, the appointment of all the election agents would be invalid, because the appointment of more than one agent would be in contravention of the provisions of Section 40 of the Act. It would, therefore, be necessary to consider the relevant provisions regarding the appointment of the election agent in the Act and in the rules made thereunder.

4. Sub-section 3 of Section 33 prescribes that every nomination paper shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under the Act for the appointment, and who shall be named in the declaration. If the form given in schedule 2 of the nomination paper is referred to, it will be clear that this declaration has to be made in the prescribed form. Then, Section 40 provides that every person nominated as a candidate at an election shall, before the delivery of the nomination paper under sub-section 1 of Section 33, appoint in writing either himself

or someone other person to be his election agent. The form No 5A under rule 11A is the one prescribed for the appointment of an election agent. This form prescribes the acceptance of the appointment by the election agent. It would, therefore appear that the appointment of the election agent has to be made first in the prescribed form, which is 5A, and, thereafter the declaration has to be made regarding the appointment of an election agent in the prescribed form. The form of the declaration is given in schedule 2, and it appears that the declaration is to be made at the foot of the nomination paper, because there is only one form both for the nomination and for the declaration of the agent prescribed in schedule 2. But there is no doubt that the appointment of the election agent is to precede the declaration to be made under sub-section 3 of Section 33. In the present case also, the petitioner had filed the paper relating to the appointment of the election agent separately along with the nomination paper No. 2 on 26th November 1951. Similar papers relating to the appointment of himself as election agent, were filed with the nomination papers Nos 2/2 and 2/3.

5 Reference may also be made to the form of the nomination paper given in schedule 2, and to the explanatory foot-note given in that form about the appointment of election agent. That foot-note is as follows — 'Only one election agent is to be appointed by a candidate. If more than one nomination paper is delivered by or on behalf of a candidate for election in the same constituency, the name of the election agent so appointed, whether such agent is the candidate himself or any other person, shall be specified in each such nomination paper.' It would, therefore, clearly appear from the provisions of section 40, and from this explanatory note in the form of the nomination paper in schedule 2, that a candidate can appoint only one person as his election agent. There cannot, therefore, be any doubt that a candidate has no right to appoint more than one person as his election agent.

6 On the provisions of Section 40, and particularly on the explanatory foot-note in the form of the nomination paper in schedule 2, it was urged on behalf of respondent No 4 that the petitioner had contravened the provisions of Section 40 by appointing two election agents in the three nomination papers. It was, therefore, urged on his behalf that the petitioner had contravened the provisions of sub-section 1 of Section 33 inasmuch as he had not filed the nomination paper completed in the prescribed form. Consequently, it was urged that the Returning Officer had the right under clause (d) of sub-section 2 of Section 36 to reject his nomination. It was urged that the form of the nomination paper given in schedule 2 prescribes that only one election agent has to be appointed in each nomination paper, and as the petitioner had declared different persons as his election agents in different nomination papers, all the nomination papers must be considered to be not in the prescribed form and therefore liable to be rejected under Section 36 sub-section 2 clause (d).

7 On behalf of the petitioner, it was urged that all the nomination papers have to be treated as separate entities, and if even one nomination paper is found to be in order, the candidate must be considered to be validly nominated. In support of this view, reference was particularly made to the Razzar Mohemadan Rural Constituency 1937 case reported in Sen and Poddar's Election Cases at page 716. In that case different election agents were appointed by different nomination papers. Still it was held that the nomination was not invalid because only one agent was appointed in each nomination paper. But we do not think, this decision can be considered as authority on the question we have to consider, because in the Government of India, Act, 1935 and in the rules made thereunder, there was no provision about appointment of an election agent before filing the nomination paper. The provisions of rule 15 and 18 made under that Act were not quite similar to the provisions of Section 33 and Section 40 of the Representation of the People Act. Under the present Act only one Agent can be appointed by each candidate, and that appointment has to be in a prescribed form which is to be separate from the nomination paper. Moreover, in that decision the effect of appointing several agents in different nomination papers, which are each found to be valid and in order, has not been considered. If the view propounded in that case were to be accepted the result would be that on consideration of each nomination paper separately, and on holding each nomination paper individually in order, there would be several persons appointed as agents, the result which is clearly in contravention of the provisions of Section 40. The Act is very clear on the point *viz.*, that there shall be only one election agent for each candidate. Therefore, if each nomination paper is treated as a separate entity, and if treating them as such, all are found in order, though different agents are appointed in different nomination papers, the result would be one directly in contravention of the provisions of section 40 of the Act. We are, therefore, unable to agree with the view expressed in that decision *viz.*, that each nomination paper is to be treated as a separate

entity, and if there is only one election agent mentioned in each nomination paper, that nomination paper should be considered as valid. We are not, therefore, basing our decision on the view expressed in Razzar Mohemadan Constituency case.

8 Then, it is clear that to some extent all the nomination papers have to be scrutinised not entirely as separate entities, but in relation to each other to some extent. This is also clear from the provisions of Section 33 sub-section 2 and from the proviso to that sub-section. At the same time, the provisions of sub-section 7 of section 33 and of sub-section 3 of Section 36 cannot be disregarded altogether. According to these provisions, a candidate has a right to file more than one nomination paper and if one out of several nomination papers is found to be valid he has to be declared as duly nominated. It would, therefore, appear that to some extent each nomination paper has to be considered as separate entity. If, therefore, the three nomination papers filed by the petitioner are considered as separate entities, it is clear that each nomination paper is in the prescribed form, because only one election agent is declared in each nomination paper. But in our view what is really important to consider is not the declaration about the election agent in the nomination paper, but the appointment of the election agent as prescribed in form 5-A. In our view, a candidate has the right to appoint one election agent only and therefore as soon as that right is exercised by making an appointment in the prescribed form he is under the obligation to declare in each nomination paper the name of that election agent only. This is clear because Section 40 only permits the appointment of one election agent. No candidate, therefore, can after once appointing a particular individual as his election agent declare someone else as his election agent in other nomination papers without revoking the first appointment. We are therefore, of the opinion that after making the appointment of Jayashanker as his election agent on 26th November 1952 the petitioner had no right to declare himself as the election agent in the two nomination papers filed on 27th November 1951 and 28th November 1951. As he had declared himself as the election agent in the nomination paper 2/2 and 2/3 before revoking the appointment of Jayashanker, to that extent those two nomination papers were invalid, because they contained the declaration about an election agent who was not validly appointed as election agent by the petitioner. To this extent it was certainly permissible to the Returning Officer to consider all the three nomination papers together. It cannot therefore be urged on behalf of the petitioner that even though different persons were appointed in different nomination papers as only one person was appointed as election agent in one nomination paper each nomination paper should be considered valid.

9 Then, the question arises as to whether all the nomination papers would be rendered invalid by the appointment of different election agents in different nomination papers. On this question it was urged on behalf of respondent No. 4 that by appointment of different election agents in different nomination papers, the provisions of sub-section 1 of section 33 read with the explanatory foot-note in the form of nomination paper in schedule 2 were contravened and therefore all the nomination papers were rendered invalid. But there is nothing in sub-section 1 or sub-section 3 of Section 33 or in the explanatory foot-note which can support this contention. It is true that the explanatory foot-note in the form of the nomination paper in schedule 2 does prescribe that there shall be only one election agent appointed by each candidate. But that explanatory note can at the most be construed as laying down that each nomination paper shall contain a declaration about the appointment of the same election agent. It was also urged on behalf of respondent No. 4 that the Election Commission has in the booklet issued by the Election Commission to explain certain provisions of the Act construed the provisions of Sections 40, 33 and of the explanatory note in the form of the nomination paper as laying down that the name of the same person should be mentioned as election agent in each of the nomination papers and if that is not done all the nomination papers are liable to be rendered invalid. This appears to be the case, but as mentioned in the preface to that booklet what is stated therein has not to be considered as authoritative interpretation of the different provisions of the Act or of the rules made thereunder. At the most these provisions can be construed as laying down that only one person can be appointed as election agent, and his name only shall be declared in each nomination paper.

10 Assuming therefore that the name of the same person as the election agent has to be declared in each nomination paper that would not render all the nomination papers invalid on the ground that they are not in the prescribed form. At the most it can be said that the two subsequent nomination papers Nos. 2/2 and 2/3 in which a different election agent was declared were invalid as they were not in the prescribed form inasmuch as they did not contain the declaration about the election agent who was duly appointed under Section 40 of the Act. But as regards the first nomination paper No. 2 it cannot be urged that the declaration

regarding the election agent in that nomination paper was invalid, because undoubtedly that very person was duly appointed as election agent under Section 40. Therefore, even assuming that the name of the same person has to be mentioned in all the nomination papers as the election agent, that would not invalidate the first nomination paper.

11 We have come to this decision on the general principles of law regarding principals and agents. When a statute gives anyone the right to appoint for a particular purpose one person as his agent, and when that person exercises that right by appointing a particular individual as his agent, he has exhausted his right under that statute and any further appointment of some other person as his agent would be in excess of his statutory right, and would, therefore, be inoperative and void. Consequently, the petitioner, by appointing Jayashanker as his agent on 26th November 1951, had exhausted the right granted to him under Section 40 of the Act to appoint an election agent, and had no further right to appoint any other person as his election agent before revoking the appointment first made. In this view, the appointments made on 27th and 28th of himself as election agent were void and were of no effect whatever. The result then would be that the two nomination papers 2/2 and 2/3 did not contain any declaration about the duly appointed agent. But that would not affect the validity of the declaration made about the duly appointed agent in the first nomination paper No. 2. This was exactly the view taken in Benaras and Mirzapur Districts Mohemadan Rural Constituency, 1937 reported in Sen and Poddar's Election cases at page 154. The relevant observations are at pages 158 and 159 of the report as follows —

‘There is no specific provision in election law to invalidate each of the two nominations so filed. We have, therefore, to fall back upon general principles of law which determine the validity of more than one act performed by a person in the exercise of a limited power with which he is invested by a particular provision of law. An election agent is a person occupying a particular status and burdened with peculiar liabilities. He is a creation of the law and the power to appoint him is contained in Paragraph I, Part II of the Corrupt Practices Order, which imposes a duty and confers a power at the same time but it clearly limits the power to the appointment of only one election agent. This power is exhausted as soon as some one person is appointed. Upon general principles any subsequent appointment made by him must be deemed to be in excess of the power given by the law and consequently invalid. The question, therefore, arises whether any such subsequent or void appointment can have the effect of invalidating the original appointment validly made. We are clearly of opinion that the answer must be in the negative. The first appointment having been validly made the power was exhausted and it remained good and valid and unaffected by the subsequent and void appointment of Murtuza in serial No. 4”

12 On behalf of respondent No. 4 reference was made to the decision in Maunpur and Etah Districts Mohemadan Rural Constituency, 1946 reported in the same volume at page 530. But in that case, the facts were entirely different. In that case several nomination papers were filed simultaneously, and it was, therefore, held that it was not clear as to which agent was appointed first in point of time. It is clear, therefore, that the decision in that case is hardly of any help to respondent No. 4. In a recent decision by the Election Tribunal constituted to hear the petition about election to the Bombay Legislative Assembly from Borad Constituency the same point came to be considered. There also two different election agents were appointed by two sets of nomination papers filed on different dates. Following the view taken in Benaras and Mirzapur Districts Mohemadan Constituency Case, the Tribunal held that the nomination of the petitioner was improperly rejected. We feel, therefore, no doubt that the first nomination paper No. 2 was in the prescribed form.

13 The next question for consideration is whether the petitioner had the right to revoke the appointment of the agent before the scrutiny, and if such appointment is revoked what is its effect. There is no doubt that before the date of scrutiny, the petitioner had made the application Ex. 15 to the Returning Officer revoking the appointment of Jayashanker and appointing himself as the election agent. It was urged on behalf of respondent No. 4 that after the date for filing the nomination papers the petitioner had no right to revoke the appointment of the election agent. We do not think this contention is sound. Section 42 of the Act and particularly sub-section 2 of that section, clearly allows the candidate to revoke the appointment of the agent at any time before or after the election. Sub-section 2 also allows the candidate to appoint forthwith either himself or some

other person to be his election agent after revoking the first appointment. Therefore, there is nothing in the Act which prohibits the candidate from revoking the appointment of the agent after the last date for filing the nomination papers and before scrutiny. The petitioner had, therefore, the right to revoke the appointment of Jayashanker at any time, and he had exercised that right in the prescribed manner. The Returning Officer was, therefore, bound to consider the appointment of Jayashanker as revoked. Then, it is clear that on the date of the scrutiny, the petitioner was the only person, who was appointed as election agent. On this ground also, the Returning Officer was in error in rejecting the nomination of the petitioner.

14. The last question requiring decision is whether the result of the election was materially affected by rejection of the nomination of the petitioner. It is now well-settled that when the nomination of any candidate is improperly rejected by the Returning Officer, there is a strong presumption that by such rejection, the result of the election has been materially affected. This view has been taken in a series of decisions which are reported in Sen and Poddar's Election Cases at pages 1, 15, 66, 106, 122, 313, 649, 712 and 759. The learned Advocate for respondent No. 4 also conceded that such a presumption does arise. But he urged that in this case this presumption was rebutted satisfactorily, because even if the petitioner's nomination had been held valid, and if he had contested the election, the result would not have been different, because he would not have obtained a larger number of votes than respondent No. 4. The learned Advocate based his argument on the assumption that only 35 per cent. of the total number of voters would have exercised their franchise. We do not think, we would be justified in accepting this assumption as well founded, because it is difficult to say how the voters would have reacted if this petitioner had been in the field as one of the candidates. Similarly, it cannot be said as to how many voters, who had voted for respondent No. 4, would have, or would not have voted for the petitioner. It is clear that respondent No. 4 had only secured 25 per cent. of the total votes in this constituency. Only if respondent No. 4 had been able to secure the votes of 51 per cent. of the total number of voters in this constituency, it would have been possible to say with some certainty that the result of the election would not have been affected to any extent by the petitioner being one of the candidates at the election. Even then the petitioner could have urged that if he had been in the field, majority of the voters, who had voted for respondent No. 4, would have voted for him. It is, therefore, difficult to say with any certainty that the result would not have been otherwise if the petitioner had been in the field as one of the candidates. We are, therefore, of the opinion that by rejection of the nomination of the petitioner, the result of the election was materially affected.

15. In the result, we hold that the nomination of the petitioner was improperly rejected, and such rejection has materially affected the result of the election. We, therefore, declare the election from Jamnagar West Constituency to be wholly void. Respondent No. 4 must pay also the costs of this petition to the petitioner. We assess the costs at Rs. 75.

ORDER

The election from Jamnagar City West Constituency held in January 1952, is declared to be wholly void, and respondent No. 4 is directed to pay Rs. 75 as costs to the petitioner. The other respondents shall bear their own costs.

(Sd.) N. L. Vyas, *Chairman*,
Election Tribunal.

RAJKOT;

Dated the 13th December, 1952.

(Sd.) VASANTLAL V. MEHTA, *Member*,
Election Tribunal.

(Sd.) HIRALAL. C. SHAH, *Member*,
Election Tribunal.
[No. 19/60/52-Elec.III.]

S.R.O. 2122.—WHEREAS the election of Shri Bhimandas, advocate, Diggi Bazar, Ajmer, as a member of the Legislative Assembly of the State of Ajmer from the Ajmer IV (Town Hall) Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Lala Menghraj of Jhola Mohalla, House AMC No. VII/44, Ajmer;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, STATE OF AJMER, AJMER.

ELECTION PETITION No. 242 OF 1952.

Coram.

Shri J. D. Sharma—*Chairman.*

Shri C. Jacob.

Shri S. N. Agarwal. } Members of the Election Tribunal.

Lala Mengh Raj son of Bahrumal of Julaha Mohalla, Ajmer, represented by Shri M. B. L. Bhargava and Shri Shantilal Gupta, Advocates—*Petitioner.*

Versus

1. Shri Bhimandas son of Lohardas Manwani, aged about 38 years, Advocate, Diggi Bazar, Ajmer represented by Shri Chunnilal, Shri D. D. Bhargava, and Shri Milapchand Advocates.
2. Shri Jethanand son of Wadhmal aged about 46 years, merchant, Cinema Road, Ajmer.
3. Shri Dev Dutt Sharma, aged about 45 years Advocate Kalsergunj, Ajmer.
4. Shri Sureshchandra Mahresh aged about 50 years Mundri Mohalla, Ajmer.
5. Shri Nebhandas son of Jaromal, Diggi bazar, Ajmer.
6. Shri Amrit Kumar Sanghi, C/o India Motors Katchary Road, Ajmer.
7. Kunwar Sri Karan Sarda, Advocate, near Daulat Bagh, Ajmer.
8. Shri Madanlal of Ajmer.
9. Shri Rikhabchand Jain, Advocate, Ajmer.
10. Shri Jhamandas near Jethanand Wadhmal, Station Road, Ajmer.
11. Shri Doctor Hassaram, Diggi Chowk, Ajmer—*Respondents.*

JUDGMENT

This is a petition challenging the election of Shri Bhiman Das respondent No. 1 to the Ajmer Legislative Assembly from Ajmer IV Town Hall Constituency.

The petitioner was an elector enrolled at serial No 2441 Ward No. 14, Ajmer City in the electoral roll relating to the Ajmer I South West Constituency of the Ajmer Legislative Assembly. He filed one nomination paper serial No. 8 on 4th December, 1951, containing the declaration of the appointment of Jugal Kishore son of Bherumal as the election agent and the further declaration that the two bulls with yoke on was chosen as the symbol. The petitioner filed two nomination papers serial Nos 36 and 37 on 5th December, 1951, each containing the declaration of the appointment of the petitioner himself as the election agent. The nomination paper No. 36 contained the declaration of the choice as symbols in the order of preference of two bulls, cycle and ladder. The nomination paper No. 37 contained the declaration of the choice as symbols in the order of preference of two bulls with yoke on,

bycles and ladder. The seconder of the nomination was one Kesomal Khemchand serial No. 1251 Ward No. 10 Ajmer City Constituency No. IV. On scrutiny by the Returning Officer on 12th October, 1951, the three nomination papers of the petitioner were rejected on the ground that he had appointed two election agents, himself and his brother Jugal Kishore. The nomination paper No. 37 was also rejected on the additional ground that at serial No. 1251 the recorded elector was Shrimati Bhoji Bai Sitaldas and not Kesomal Khemchand. The respondents 2 to 11 were the other duly nominated candidates. One Shri Vensimal Goma Mal also filed the nomination paper serial No. 33 on 5th December, 1951. His nomination paper was rejected on the ground that the Constituency for which he was a candidate was not clearly described. On the result of the election, the respondent No. 1 was declared elected.

The election of respondent No. 1 is challenged on the grounds that the nomination papers of the petitioner were improperly rejected and the rejection has materially affected the result of the election and the nomination paper of the respondent No. 2 was wrongly accepted as the appointment of Shri Moolchand L. Lalwani as the election agent was contrary to the provisions of section 74 and section 145 of the Representation of the People Act on account of his being the Legal Adviser to the Custodian of Evacuee Property, Ajmer, on a monthly salary of Rs. 150 which was an office of profit. Also the respondent No. 2 held an office of profit as he was an assessor of the Court of Session, Ajmer. The respondents 2 to 11 have not entered appearance.

The respondent No. 1 contests the petition on the grounds that the nomination papers of the petitioner were properly rejected and the rejection has not materially affected the result of the election and the nomination paper of respondent No. 2 was properly accepted and the acceptance has not materially affected the result of the election and the petitioner is not entitled to challenge the acceptance of the nomination paper of respondent No. 2. It is further pleaded that the nomination papers of the petitioner were also invalid on the grounds mentioned in para. 13 of the written statement and the petition is not maintainable for non-joinder of Shri Vensimal Goma Mal a duly nominated candidate and is bad for want of proper particulars and verification. The respondent No. 1 claims special costs under Section 35A C.P.C.

On the pleadings, the following issues are framed:—

1. Were the nomination papers of the petitioner wrongly rejected? If so, has it materially affected the result of the election?
2. Were the nomination papers of the petitioner invalid as alleged in para. 13 of the written statement of respondent No. 1? Is this plea open to respondent No. 1?
3. Was the nomination paper of respondent No. 2 wrongly accepted? If so, has it materially affected the result of the election?
4. Is the petitioner entitled to challenge the acceptance of the nomination paper of respondent No. 2?
5. Was Shri Vensimal son of Shri Goma Mal a duly nominated candidate and is the petition not maintainable for his non-joinder?
6. Is respondent No. 1 entitled to special costs?
7. Should the election of respondent No. 1 be declared void?

Findings.

Issue No. 1.—S 40(1) of the Representation of People Act hereinafter referred to as the Act provides that every person nominated as a candidate at an election shall before the delivery of his nomination paper under sub-section 1 of s. 33 appoint in writing either himself or some one other person to be his election agent. On a plain reading of S. 40 it is clear that the Act contemplates a simple election agent. The same conclusion is reinforced by the provisions contained in Sections 41, 42, 43, 44, and 45 of the Act. This has been the unanimous opinion of all the Tribunals before when the question arose. Indeed, it has not been seriously argued that more than one election agent is permissible.

It has been argued on behalf of the petitioner that each nomination paper is a separate entity and the defects of one cannot affect the validity of the other. Stress is laid on the fact that the nomination paper serial No. 8 was filed on 4th December, 1951, and the nomination papers serial Nos. 36 and 37 were filed on 5th December, 1951. S. 33(7) of the Act says that nothing shall prevent any candidate

from being nominated by more than one nomination paper for election in the same Constituency. The question, however, is whether each nomination paper if separately filed is a separate entity and has to be considered independently of the other at the time of scrutiny. Reliance on behalf of the petitioner has been placed upon the decision in the election petition relating to Banaras and Mirzapur Districts Mohamadan Rural Constituency reported at p. 197 in the Indian Election Cases 1935—50 Volumes II by H. S. Deabia. In that case two nomination papers were filed at an interval of a few minutes. One contained a declaration appointing the candidate himself as his election agent while the other contained a declaration appointing another person as his election agent. On the interpretation of Rule 4(6)(1) of the U.P. Election Rules 1936, the Tribunal held that the nomination paper filed first in time was valid but second was invalid and that the Returning Officer is required by law to consider the nomination papers one by one in the order in which they are received and has to accept or reject one nomination paper before proceeding to consider another. If a nomination paper which he takes up for consideration fulfils all the requirements of the law without there being any necessity to refer to any other nomination paper, he must accept it and must endorse his decision thereon. Similar view was taken in Razzar Mohammad Rural Constituency 1937, p. 716—Sen and Poddar where it was held that the appointment of two different election agents in two sets of nomination papers is not illegal nor does the invalidity of one affect the other. These cases have been followed in the Election Petition No. 11 of 1952 published in the *Gazette of India Extraordinary*, dated 20th October, 1952, p. 2307. But the authority of the decision in the Banaras and Mirzapur Districts case on which the two other decisions are mainly based was considerably shaken by the decision in Mainpuri and Etah Districts Mohamadan Rural Constituency—Indian Election Cases 1935—51 Sen and Poddar p. 530. It was held that simultaneous presentation of multiple nomination papers each containing declaration of appointment of different election agent by a candidate invalidates all the nomination papers. On the basis of the decision in Banaras and Mirzapur Districts case, it was contended that that decision governed equally the cases in which the nomination papers are filed simultaneously and these in which they are presented one after the other. Referring to this contention, it was remarked, "We are unable to accept this argument for three reasons—(1) the question of simultaneous presentation was not before the Tribunal which heard the petition in Banaras and Mirzapur Districts case, (2) there are in the first para. of the report expressions which lend colour to the contention of the petitioner, we are doubtful whether the Tribunal intended to lay down this as a rule of interpretation applicable to simultaneous presentation and (3) we do not think that the report of the Tribunal was based upon this interpretation". But in the concluding portion of the decision, it was observed, "It is true that many of the remarks made in this judgment would appear to apply equally to a case of simultaneous presentation and at one place they are so applied by the Tribunal. We think however that must have been 'per incuriam' as the special difficulties relating to simultaneous presentation were not considered in that report. It is certainly 'obiter' as there was not a case of simultaneous presentation before the Tribunal. The basis of the decision seems to be that when once the candidate has used his power of appointment any subsequent declaration of such appointment by him is invalid and will have no more effect than if he had left the declaration of appointment on the second nomination paper blank, when the case would come under the proviso to sub-rule (6)(a). Since the invalidity of the second appointment can only be determined by a reference to the first, the principle that nomination papers are to be considered and their validity determined as separate entities is not absolute. If we apply the same principle to two nomination papers presented simultaneously, the objection of the petitioner discussed by the Tribunal seems to us to be unanswerable".

In view of the above observations, each nomination paper is not an absolutely separate entity as appears to have been the view taken in the Banaras and Mirzapur Districts case. Not only can the validity of the second appointment of an agent be determined without reference to the first, the validity of a nomination paper cannot also be judged under s. 33(2) of the Act without reference to all the nomination papers. On principle, there is no distinction between the nomination papers filed at intervals short or long and the nomination papers filed simultaneously. S. 33 of the Act lays down a particular mechanism for the presentation of nomination papers and if that mechanism is followed then irrespective of whether the nomination papers are filed simultaneously or at interval, their legal entity cannot be different. There is no warrant for introducing the element of time and it strikes anomalous that two nomination papers filed at an interval of some minutes as was the case in the Banaras and Mirzapur Districts case would each be separate entity while the nomination papers filed simultaneously would all be one entity. We are, therefore, of the opinion that legally there is no difference between the nomination papers presented simultaneously and these presented at short or long intervals.

S.36(6) of the Act provides that the Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper is rejected shall record in writing a brief statement of his reasons for such rejection. This is absolutely inconsistent with the position that each nomination paper is a separate entity, and if one is accepted as valid then the rest need not be scrutinised. The above provision has a sound basis. More than one nomination papers are filed to safeguard against the possible rejection of one or more than one nomination paper. Supposing that a Returning Officer accepts the first nomination paper, if the above contention is true, then it will not be necessary for him to scrutinise the rest. But the Tribunal before whom the matter comes up for decision may take a different view and find the nomination paper accepted by the Returning Officer to be invalid. It is, therefore, rightly enjoined by s. 36(6) on the Returning Officer to scrutinise all the nomination papers and make the endorsement of acceptance or rejection on the same. In doing this, the Returning Officer cannot treat each nomination paper as an absolutely separate entity. And he may reject all the nomination papers and if there are more than one election agent the question will arise which of them will certify the return of the candidate's election expenses under s.76 of the Act. The only possible conclusion therefore is that the nomination papers filed by a candidate are not separate entities except for certain purposes.

This was the view taken in the case reported in 1941 A.I.R. Calcutta 130 on the interpretation of the election rules under the Calcutta Municipal Act which were identical with the provisions of Sections 33 and 36 of the Act.

It is further argued on behalf of the petitioner that as under Section 40 of the Act only one election agent can be appointed the power to appoint is exhausted as soon as one is appointed with the result that the subsequent appointments are invalid. In other words, the appointment of Jugal Kishore as election agent of the petitioner exhausted his powers to appoint another election agent and he could not, therefore, appoint himself as an election agent and there was no appointment of a second election agent in the two nomination papers filed on 5th December, 1951. Reliance in support is placed upon the Banaras and Mirzapur Districts case followed in the Election Petition No. 11 of 1952. The provision in the U.P. Corrupt Practices Order 1936 was almost analogous with s. 40 of the Act. It laid down that every person nominated as a candidate at the election shall at the prescribed time and in the prescribed manner appoint either himself or some one other person to be his election agent. Referring to this provision it was laid down in the above case that, "it imposes a duty and confers a power at the same time, but it clearly limits the power to the appointment of only one person as the election agent who may either be the candidate himself or some one else. The candidate who has made one appointment has no power left to make any further appointment at a subsequent time. Upon general principles, any subsequent appointment made by him must be deemed to be in excess of the powers given by the law and consequently invalid". With all respect, we are unable to subscribe to this view. The power to appoint an election agent inheres in a candidate and can be exercised and is not exhausted until the time to file the nomination paper has expired. The power is not akin to a right to property on the transfer of which no title remains in the transferor for further exercise of the right of transfer. It is why the appointment of more than one election agent invalidates the nomination papers. If the contention of the petitioner were to prevail then no nomination paper on the ground of the appointment of more than one election agent can be invalid for only one election agent can be appointed at a time and once he has been appointed, all subsequent appointments will be void. In this view of the matter, even the nomination papers simultaneously filed as in the Mainpuri and Etah Districts case will be perfectly valid. The view taken in the Banaras and Mirzapur Districts case therefore conflicts with that taken in the later case. No other case except the Election Petition No. 11 of 1952 has been cited in which the nomination papers of a candidate appointing more than one election agent were held valid. In the Calcutta case referred to above, the nomination papers were rejected as more than one election agent had been appointed. We, therefore, hold that the appointment by the petitioner of two election agents, Jugal Kishore and himself, was invalid and affected the validity of the three nomination papers.

Finally, it has been urged on behalf of the petitioner that as s. 40 of the Act does not provide a penalty, the appointment of more than one election agent does not invalidate the nomination papers. Reliance in support is again placed upon the Banaras and Mirzapur Districts case and the election petition No. 11 of 1952. But the consensus of judicial opinion has been that the appointment of more than one election agent invalidates the nomination papers. Under s. 36(2) (d), the Returning Officer may refuse any nomination on the ground that there has been any failure to comply with any of the provisions of s. 33. S. 33(3) of the

Act provides that every nomination paper shall be accompanied by a declaration in writing subscribed by the candidate that he has appointed as his election agent for the election either himself or another person who is not disqualified under the Act for the appointment. As under s. 40, only one election agent can be appointed, the declaration on the different nomination papers must under s. 33(3) be in respect of the same election agent. The position is made absolutely clear by the note marked (*) in the nomination form given in schedule II of the Rules framed by the Government of India after consulting the Election Commission under s. 169 of the Act. It says, "Only one election agent is to be appointed by a candidate. If more than one nomination paper is delivered by or on behalf of a candidate for election in the same Constituency, the name of the election agent so appointed whether such an agent is the candidate himself or any other person shall be specified in each such nomination paper". As the declarations on the nomination papers filed by the petitioner were in respect of the two persons—himself and Jugal Kishore—there was clearly a contravention of s. 33 rendering the nomination papers liable to rejection. We are, therefore, of the opinion that the nomination papers of the petitioner have been rightly rejected. In this view of the matter, the question if the rejection has materially affected the result of the election does not arise for decision.

Issue No. 2.—It is settled law that a respondent can support the order of the Returning Officer on grounds other than these mentioned in the order *vide* Jagat Narain's Indian Election Petitions Volume IV p. 99. Similar view was taken in decisions reported at p. 389 of Indian Election Cases 1935-51, Sen and Podder, where it was held that want of objection to a nomination paper at the scrutiny does not stop the petitioner from challenging the same before the Tribunal. It is, therefore, open to the respondent No. 1 to support the rejection of the petitioner's nomination papers on the grounds mentioned in para. 13 of the written statement.

The grounds mentioned in para. 13 may be dealt with *seriatim*—

1. It is pointed out that the petitioner did not produce a certified copy of his elector roll. It was for the Returning Officer to call upon the petitioner to file a copy of his elector roll, and if he did not, the respondent No. 1 cannot urge the non-production of the certified copy as a ground for rejection of the nomination papers.

2. The Constituency is described as No. IV, while the correct description is Ajmer IV Town Hall. The description is sufficient for the identification of the proposers and seconders and the defect, if any, is not of a substantial character so as to entail the dismissal of the nomination papers.

3. 4. & 5. Rule 11(a) says, "when a candidate appoints in the manner provided by s. 40 some person other than himself to be his election agent such appointment shall be in the form 5-A. The contention of the respondent No. 1 is that the form 5-A must have been filed with the nomination paper serial No. 8, and as it was not filed the provisions of s. 33(3) of the Act were contravened. It is not denied that Jugal Kishore brother of the petitioner was appointed the election agent. The petitioner has stated that he appointed Shri Jugal Kishore as his election agent. Shri Jugal Kishore has corroborated him and stated that he consented to his appointment as an election agent and in token of his assent signed a separate form. According to Rule 11(a), that form must have been form 5-A as given in schedule of the Rules. The copy of the above form has not been produced by the petitioner. On the other hand, the respondent No. 1 has filed a letter of the Returning Officer saying that no accompaniments appear to have been received with the nomination papers filed by Shri Mengh Raj. As the copy of the form 5-A has not been produced, it is not possible to hold that form 5-A accompanied the nomination papers serial No. 8. But the failure to file the form 5-A with the nomination paper is not a contravention of s. 33(3) of the Act which refers to a declaration and the form 5-A is described as form of appointment of an election agent and is not a declaration. It is nowhere provided in the Act that it shall be filed with the nomination paper. Non-filing of the form 5-A did not, therefore, invalidate the nomination paper serial No. 8.

The validity of the nomination papers is also challenged on the ground that the petitioner did not make a declaration of the choice of symbols as required by law. A candidate is required to make a declaration of three symbols in the order of preference. The nomination paper serial No. 8 contains a declaration of the choice of "two bulls with yoke on". The other two nomination papers contain three symbols in the order of preference. But in the nomination paper No. 36, the first symbol is "two bulls" only and in the nomination paper No. 37, the symbol "cycle" is written as "Bycles". The petitioner was a congress candidate approved by the Congress Central Parliamentary Board. The Official symbol of the congress was "two bulls with yoke on". If the nomination papers of the petitioner were not

rejected, then he would have been allotted the congress symbol. It is, therefore, immaterial that only one symbol was mentioned in the nomination paper serial No. 8. Also the omission of the words "with yoke on" against the "two bulls" in the nomination paper serial No. 36 is not material. The objection relating to the symbol "bicycle" written as "Byclee" is on the face of it frivolous. The nomination papers were, therefore, not liable to be rejected on the aforesaid ground.

6. & 7. These relate to the appointment of more than one election agent and are covered by the finding on issue No. 1.

8. There is nothing on the record to show that the signatures of the proposers and seconders were obtained by fraud.

Issue No. 3.—The validity of the nomination paper of respondent No. 2 is challenged on the ground that his election agent Shri Moolchand L. Lalwani held an office of profit as he was the Legal Adviser of the Custodian on a monthly salary of Rs. 150. S. 41 of the Act says that no person shall be appointed an election agent who is disqualified from being an election agent under s. 145. The holding of an office of profit is not a disqualification under s. 145 of the Act. The nomination paper of the respondent No. 2 was, therefore, perfectly in order and was properly accepted.

Issue No. 4.—In view of the finding on issue No. 3, this issue does not arise for decision.

Issue No. 5.—Shri Vensimal Goma Mal filed the nomination paper serial No. 33 on 5th December, 1951. Only one nomination paper is prescribed for election to several bodies of which two are Ajmer Legislative Assembly and Electoral College. Shri Vensimal scored out all but the Ajmer State Legislative Assembly and Electoral College although the latter has a cross-mark before it. The nomination paper was rejected on the ground that he had not stated whether he wanted election to the Legislative Assembly or Legislative Council which in the opinion of the Returning Officer was a material defect sufficient to warrant the rejection of the nomination paper. One fails to understand how the Returning Officer thought that Shri Vensimal could seek election to the Legislative Council which stands scored out. But, it is hardly necessary to go into the merits of the order of the Returning Officer rejecting the nomination paper. S. 82 of the Act says that a petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was nominated. The question is whether Shri Vensimal was a duly nominated candidate. The Act does not contain a definition of a 'duly nominated candidate'. A candidate as defined in s. 79(b) means person who has been or claims to have been duly nominated as a candidate at an election. Shri Vensimal was, therefore, a candidate. But unless he was also a duly nominated candidate, the provisions of s. 82 will not apply. The various provisions relating to the nomination of a candidate leave no doubt that Shri Vensimal was a duly nominated candidate. Under s. 33(3) of the Act, a candidate is duly nominated if he has filed a nomination paper in accordance with its provisions. It is further clear from sub-section 7 that a candidate gets nominated on a nomination paper being filed. Again s. 36(3) refers to a candidate being duly nominated by means of another nomination paper. It clearly follows that a candidate is duly nominated by a nomination paper filed in accordance with the provisions of s. 33(3) of the Act. The same conclusion is supported by s. 52 which says if a candidate who has been duly nominated dies after the date fixed for the scrutiny of nominations and report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall counter-mend the poll. Clearly, it refers to the death of a candidate before scrutiny. Our attention has been drawn to the decision in the Election Petition No. 3 of 1952 published in the *Gazette Extraordinary*, dated 19th November, 1952, p. 2443, where it has been held that a candidate whose nomination paper is rejected is not a duly nominated candidate. The various provisions referred to above do not appear to have been brought to the notice of the Tribunal and with all respect, we differ from the view taken of a duly nominated candidate in the above case.

The question is if the petition is not maintainable for the non-joinder of Shri Vensimal. It is pointed out on behalf of the petitioner that as under s. 85 the Election Commission has not been given power to dismiss the petition on account of the non-joinder of a party it follows by implication that the non-joinder of a duly nominated candidate cannot be a ground for the rejection of the petition and the Tribunal has no jurisdiction to reject the petition on that ground. Without subscribing to this view, we are of opinion that the non-joinder of Shri Vensimal is not fatal. Section 90(2) of the Act says that subject to the provisions of the Act and any Rules made thereunder every election petition shall be tried as nearly as may be in accordance with the procedure applicable under the Code of Civil

Procedure for the trial of suits. It is settled law that except in cases where a relief cannot be granted, the non-joinder of a party is not fatal to a suit. Applying the same principle to the present case, we are of opinion that the non-joinder of Shri Vensimal is not fatal to the petition as adequate relief can be granted without his being made a party. Either he was interested in challenging the election of the respondent No. 1 or in upholding it. In either case, his interests are adequately safeguarded. The position would have been different if the petitioner had claimed the seat. Reliance on behalf of the respondent No. 1 has been placed upon s. 92 of the Act which specifies the powers of the Tribunal in respect of certain matters under the Civil Procedure Code. These powers are illustrative and not exhaustive and are not inconsistent with the other rules of procedure governing the non-joinder of parties. In our view the non-joinder of Shri Vensimal is not fatal.

Issue No. 6.—Considering that the nomination papers of the petitioner were rejected on a technical, although substantial ground, we think it is not a fit case in which special costs under s. 35-A C.P.C. should be awarded.

Issue No. 7.—In view of the findings on issue No. 1, the petition is liable to be dismissed.

ORDER

The petition is dismissed. The petitioner will bear his own costs and pay Rs. 250 as costs to the respondent No. 1.

AJMER;

The 18th December, 1952.

(Sd.) J. D. SHARMA,

(Sd.) C. JACOB,

(Sd.) S. N. AGARWAL.

[No. 19/242/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on Special Duty.

